

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARCELINO CAMACHO, et al.,  
Plaintiffs,

v.

NATIONAL CREDIT ADJUSTMENT  
AGENCY, et al.,  
Defendants.

No. CV-06-5040-FVS

ORDER

**THIS MATTER** comes before the Court without oral argument based upon a motion to dismiss. The defendants are represented by Shea Meehan, David Broom, and Gary Hugill. Mr. and Mrs. Camacho are represented by Michael D. Kinkley and Timothy Durkop.

**BACKGROUND**

Marcelino Camacho issued a \$50.00 check to a store. The check was dishonored by the drawee. On or about April 23, 2004, a representative of National Credit Adjustment Agency mailed a notice of dishonor to Mr. Camacho. The notice demanded that Mr. Camacho pay the sum of \$92.99. This included \$1.99 in interest. On May 19, 2006, Mr. Camacho and his wife, Maria, filed an action against National Credit Adjustment Agency and six individuals. Their complaint alleges violations of both the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692-1692o, and the law of the State of Washington. Some,

1 but not all, of the defendants move to dismiss the Camachoes' FDCPA  
2 claim under Federal Rule of Procedure 12(b)(6) on the ground that it  
3 is barred by the statute of limitations. 15 U.S.C. § 1692k(d).

#### 4 STANDARD

5 The defendants are entitled to dismissal under Rule 12(b)(6) if  
6 "the running of the statute [of limitations] is apparent on the face  
7 of the complaint." *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682  
8 (9th Cir.1980). However, "a complaint cannot be dismissed unless it  
9 appears beyond doubt that the plaintiff can prove no set of facts that  
10 would establish the timeliness of the claim." *Supermail Cargo, Inc.*  
11 *v. United States*, 68 F.3d 1204, 1206 (9th Cir.1995).

#### 13 PROVISIONAL RULING

14 Section 1692k(d) provides, "An action to enforce any liability  
15 created by this subchapter may be brought in any appropriate United  
16 States district court without regard to the amount in controversy, or  
17 in any other court of competent jurisdiction, within one year from the  
18 date on which the violation occurs." *Id.* In order to apply §  
19 1692k(d) in this context, one must answer two questions. The first  
20 is, "What constitutes a 'violation?'" The second is, "When does a  
21 violation 'occur?'"  
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23 The parties have not cited a case that squarely addresses both  
24 questions.<sup>1</sup> Some courts have ruled that, in the case of multiple  
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26 <sup>1</sup>These questions are drawn, by way of analogy, from *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 110, 122 S.Ct.

1 attempts to collect a debt, the statute of limitations begins to run  
2 upon the first attempt. A subsequent attempt to collect the debt does  
3 not trigger a new one-year period. *See, e.g., Wilhelm v. Credico*  
4 *Inc.*, 455 F.Supp.2d 1006, 1009 (D.N.D. 2006); *Sierra v. Foster &*  
5 *Garbus*, 48 F.Supp.2d 393, 395 (S.D.N.Y. 1999). *Sierra* is instructive.  
6 In that case, a debt collector allegedly pressured a consumer to enter  
7 into an illegal debt-payment agreement. This occurred on June 5,  
8 1997. *Id.* at 394. Thereafter, the consumer allegedly breached the  
9 agreement. *Id.* The debt collector filed an action and served copies  
10 of a summons and complaint on January 21, 1998. *Id.* at 395. On  
11 December 8, 1998, the consumer filed an action alleging that the debt  
12 collector violated the FDCPA. *Id.* The District Judge ruled that the  
13 consumer's FDCPA claim was time-barred because it was based upon the  
14 1997 agreement. *Id.* The debt collector's subsequent attempts to  
15 enforce the agreement and collect the debt did not trigger a fresh  
16 statute of limitations. *Id.*

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18 Some courts have recognized an exception to this rule when the  
19 defendant allegedly engaged in a pattern of conduct that collectively  
20 constitutes a single violation of the FDCPA. *See, e.g., Joseph v.*  
21 *J.J. Mac Intyre Cos., L.L.C.*, 281 F.Supp.2d 1156, 1159-62  
22 (N.D.Ca.2003). Courts that recognize this exception typically rely  
23 upon the Supreme Court's analysis of hostile-environment claims in  
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26 2061, 2070, 153 L.Ed.2d 106 (2002).

1 *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 122 S.Ct.  
2 2061, 153 L.Ed.2d 106 (2002) (hereinafter "*Morgan*"). See, e.g.,  
3 *Joseph*, 281 F.Supp.2d at 1160-61. They hold that, in cases involving  
4 a pattern of conduct (as opposed to unrelated discrete acts), an FDCPA  
5 claim is timely under the continuing violation doctrine as long as the  
6 plaintiff files the claim within one year of the last act that  
7 constitutes a violation. *Id.* at 1161.

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9 Not all courts agree that the continuing violation doctrine is  
10 applicable under § 1692k(d). See, e.g., *Wilhelm*, 455 F.Supp.2d at  
11 1009 (collecting cases). In this instance, it is unnecessary to  
12 choose between the conflicting rules because, even if the continuing  
13 violation doctrine is applicable, it is applicable only in cases in  
14 which the defendant engaged in a large number of similar acts. See,  
15 e.g., *Joseph*, 281 F.Supp.2d at 1161-62 ("over 200 calls to Plaintiff's  
16 residence during a nineteen-month period"). This case is readily  
17 distinguishable. Mr. and Mrs. Camacho allege that the defendants  
18 engaged in five discrete acts: mailing a notice of dishonor (April  
19 23, 2004), filing an action in state court (June 3, 2005), serving the  
20 Camachoes with copies of the summons and complaint (June 14, 2005),  
21 sending a collection letter (September 6, 2005), and telephoning Mrs.  
22 Camacho to demand payment (May 17, 2006).<sup>2</sup> In that regard, this case  
23 is much more similar to *Sierra* than *Joseph*. Thus, if an FDCPA claim  
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26 <sup>2</sup>(Amended Complaint (Ct. Rec. 2), ¶¶ 5.1, 5.5, 5.6, 5.12,  
and 5.14.)

1 accrued when the defendants mailed the notice of dishonor, the one  
2 year statute of limitations began to run on that date. The  
3 defendants' subsequent attempts at collection did not extend the  
4 deadline.<sup>3</sup>

5 The FDCPA prohibits a debt collector from making a false  
6 representation "in connection with the collection of [a] debt." 15  
7 U.S.C. § 1692e.<sup>4</sup> For example, he may not falsely state either the  
8 amount owed by the consumer, 15 U.S.C. § 1692e(2)(A), or the  
9 compensation which he may demand for his role in collecting the debt.  
10 15 U.S.C. § 1692e(2)(B). In addition, the FDCPA prohibits a debt  
11 collector from using unfair means to attempt to collect a debt. 15  
12 U.S.C. § 1692f. For example, he may not attempt to collect any  
13 amount, including interest, unless he is "permitted by law" to do so.  
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16 <sup>3</sup>There is another reason why the statute of limitations  
17 should be measured from the mailing of the notice of dishonor.  
18 The defendants' post-2004 acts and communications violate § 1692f  
19 and § 1692e only because the notice of dishonor did not comply  
20 with RCW 62A.3-515 and RCW 62A.3-520. Had the notice of dishonor  
21 complied with these statutes, the defendants' post-2004 conduct  
22 would not violate either § 1692f or § 1692e. Since the alleged  
23 illegality of the defendants' post-2004 acts and communications  
24 is a function of the contents of the notice of dishonor (and  
25 nothing else), the defendants' post-2004 acts and communications  
cannot constitute truly independent violations of §§ 1692e and  
1692f. *Cf. Morgan*, 536 U.S. at 113, 122 S.Ct. at 2072 ("The  
existence of past acts and the employee's prior knowledge of  
their occurrence . . . does not bar employees from filing charges  
about related discrete acts so long as the acts are independently  
discriminatory and charges addressing those acts are themselves  
timely filed.").

26 <sup>4</sup>The defendants do not dispute that they are "debt  
collectors," 15 U.S.C. § 1692a(6), who were attempting to collect  
a "debt," 15 U.S.C. § 1692a(5).

1 15 U.S.C. § 1692f(1). Mr. and Mrs. Camacho suggest that the notice of  
2 dishonor violated both § 1692f and § 1692e. According to them, the  
3 defendants were not permitted to demand the payment of interest at  
4 that point in time. By doing so, say the Camachoes, the defendants  
5 falsely represented the amount due on the debt.

6 Section 62A.3-515(a) of the Revised Code of Washington ("RCW")  
7 lists the demands that may be made in a notice of dishonor. Interest  
8 is not one of them. See *id.* If there is any doubt about this, it is  
9 removed by RCW 62A.3-520 and RCW 62A.3-525. RCW 62A.3-520 contains a  
10 legislatively-approved notice of dishonor. Anyone sending a notice of  
11 dishonor in the State of Washington must use substantially the same  
12 form. *Id.* The statutory form does not list interest as an item that  
13 may be demanded in a notice of dishonor. *Id.* That leads to RCW  
14 62A.3-525. A person who makes an unauthorized demand in a notice of  
15 dishonor forfeits remedies that otherwise would be available to him.  
16 Specifically, he is forbidden from recovering interest, collection  
17 costs, and attorneys' fees. *Id.*

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19 If, as Mr. and Mrs. Camacho allege, the defendants mailed the  
20 notice of dishonor that is attached to the Camachoes' complaint, the  
21 defendants committed at least two FDCPA violations. For one thing,  
22 they made a demand for interest which they were not authorized to make  
23 at that point in time. This constituted an unfair means of attempting  
24 to collect the debt. 15 U.S.C. § 1692f. See, e.g., *Duffy v.*  
25 *Landberg*, 215 F.3d 871, 873, 875 (8th Cir. 2000) (debt collector  
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1 violated the law of the State of Minnesota and, thus, § 1692f(1), by  
2 overstating the amount of interest due). For another thing, the  
3 defendants falsely represented the amount that the Camachoes owed. 15  
4 U.S.C. § 1692e.

5 In the case of illegal written demands for payment, an FDCPA  
6 claim accrues when the debt collector places the demand in the mail.  
7 *Mattson v. U.S. West Comm'n*, 967 F.2d 259, 261 (8th Cir. 1992). The  
8 defendants allegedly mailed the notice of dishonor on or about April  
9 23, 2004. Mr. and Mrs. Camacho had one year from that date in which  
10 to file a complaint. 15 U.S.C. § 1692k(d). They did not do so.  
11 Consequently, the Camachoes' FDCPA claim is time-barred insofar as  
12 they are alleging that the defendants violated §§ 1692f and 1692e by  
13 unlawfully demanding interest and falsely representing the amount of  
14 the debt owed.  
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16 **IT IS HEREBY ORDERED:**

- 17 1. The motion to dismiss (**Ct. Rec. 12**) is granted provisionally.
- 18 2. The plaintiffs may move for reconsideration. If they choose  
19 to do so, they shall file their motion and memorandum by March 23,  
20 2007.
- 21 3. If the plaintiffs move for reconsideration, the defendants  
22 shall file a response by April 6, 2007.
- 23 4. The plaintiffs shall file their reply by April 16, 2007.
- 24 5. Memoranda shall not exceed ten pages in length.
- 25 6. The motion to withdraw (**Ct. Rec. 18**) is granted.
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1 7. The motion to withdraw (**Ct. Rec. 21**) is granted.

2 8. A scheduling conference will be set.

3 **IT IS SO ORDERED.** The District Court Executive is hereby  
4 directed to enter this order and furnish copies to counsel.

5 **DATED** this 8th day of March, 2007.

6  
7 s/ Fred Van Sickle  
8 Fred Van Sickle  
United States District Judge  
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